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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,070	07/31/2003	Robert J. Maki	58095US002	2056

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EXAMINER

THOMAS, ALEXANDER S

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,070	MAKI ET AL.	
	Examiner	Art Unit	
	Alexander Thomas	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
 4a) Of the above claim(s) 19-41 is/are withdrawn from consideration.
 5) ☒ Claim(s) 13 is/are allowed.
 6) ☒ Claim(s) 1-12, 14-18, 42 and 43 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I in the reply filed on 5/25/05 is acknowledged. The traversal is on the ground(s) that the tear patterns cannot be formed in the cover web after lamination because the elastic filaments may be severed. This is not found persuasive because if the perforations are formed carefully it is possible to form cuts in the cover webs without severing the elastic filaments.

The requirement is still deemed proper and is therefore made FINAL.

Double Patenting

2. Claims 1-12, 14-18, 42 and 43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of copending Application No. 10/962,798 in view of Swanson et al and 95/06449. Applicant's arguments have been considered but are not deemed persuasive for the reasons of record. Concerning claims 42 and 43, the primary reference's article has continuously extending elastic filaments, and embossing this article as suggested in Swansen et al would not sever the elastic filaments.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-4, 7-12 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 95/06449. Applicant's arguments have been considered but are not deemed persuasive. Applicants argue that elastic filaments in the reference's product are severed when perforations are formed and, therefore, the filaments do not extend "continuously over the entire length of the article" as recited in claims 1 and 18. However, there will be elastic filaments in the unperforated areas that are not severed and these filaments would extend continuously along the length of the article. Also, claims 1 and 18, by virtue of the term "comprising", do not require that all of the elastic filaments extend continuously along the length of the article.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 95/06449. Applicant's arguments have been considered but are not deemed persuasive for the reasons of record and for the same reasons as set forth above in paragraph 4.

7. Claims 1-6, 8-12, 14, 16-18, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al in view of Swanson et al. Applicant's arguments have been considered but are not deemed persuasive. Applicants argue that providing

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tear lines in the support bandage of Hansen et al would be disadvantageous because the tear lines would weaken the bandage and, therefore there is no motivation to provide tear lines in the Hansen et al product. However, this argument is not persuasive because Swansen et al teach that their tear line structure provides a strong product with acceptable tensile strength that may be used throughout the health-care and athletics fields; see lines 5-10 of the Abstract and column 16, lines 36-56.

Therefore, providing the primary reference's product with the tear line structure of the secondary reference would not result in a product unsuitable for its intended use, namely as a support bandage. Concerning claims 42 and 43, the primary reference's article has continuously extending elastic filaments, and embossing this article as suggested by Swansen et al would not sever the elastic filaments.

Allowable Subject Matter

8. Claim 13 is allowed.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Thomas whose telephone number is 571-272-1502. The examiner can normally be reached on 6:30-4:00 M-THUR.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



ALEXANDER S. THOMAS
PRIMARY EXAMINER